

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-113370-13

Date:

September 17, 2013

LEGEND

X =

Regulator =

Date 1 =

Date 2 =

Year 1 =

Dear :

This responds to a letter dated March 15, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representative requesting permission for X to make a new S election prior to the expiration of the five-year period specified in section § 1362(g) of the Internal Revenue Code.

According to the information submitted, X indicated that it filed an election to be treated as an S corporation effective for its tax year beginning Date 1. In Year 1, the Regulator and X agreed that X would not make distributions without prior approval from Regulator. Regulator denied X's request to make distributions. X then made a business decision to transfer X shares to an ineligible shareholder to terminate its X election effective Date 2. Furthermore, there has not been a more than 50 percent ownership change in X since its S election terminated.

Section 1362(g) provides that, if a small business corporation has made an election under §1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or the shareholders having a substantial interest in the corporation and was not part of a plan of the corporation or of such shareholders to terminate the election.

In Revenue Ruling 78-275, 1978-2 C.B. 221, an election by a small business corporation engaged in the business of acquiring, developing, and subdividing land for sale to residential home builders, was automatically terminated when interest income exceeded 20 percent of its gross receipts. Pursuant to a credit agreement with a bank, the corporation was required to maintain a time deposit in the same bank. Interest income exceeded allowable amounts because the depressed economic state of the home construction industry prevented the corporation from realizing income from its operations. As a result, because the events that caused the termination were not reasonably within the control of the shareholders and were not part of a plan to terminate the election, the corporation was granted permission to make a new election prior to the expiration of the five-year period.

Unlike the situation in Revenue Ruling 78-275, X terminated its subchapter S election. X made a business decision to terminate its S election when Regulator did not grant X permission to make any distributions. Accordingly, X is denied consent to make a new subchapter S election prior to the termination of the five-year period required by section 1362(g) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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